

No 3753 Equity

collateral securities, and from the sale of the City property, and from money paid by the Complainant to Kunkel, realized more than the principal and interest advanced by him under the agreements, yet he refuses to account for the money so received, and refuses to convey to the Complainant, the Land described in Exhibit A. The Complainant then prays for a decree compelling the Defendant to account, and to convey land property, described in Exhibit A, to the Complainant. The agreements, and other material facts set out in the Bill, are all denied in the Defendants Answer. This puts upon the Complainant the burden of proving all that is necessary to make out his claim to the relief he seeks. The accounts of the Bill, do not show a resulting trust, which arises where one person buys an estate, and pays the purchase money, but takes the deed in the name of another person, then a trust results by construction of law in favor of the person who paid the money. The agreement or facts relied on in this case are not manifested or proved by any writing, but rest wholly in Parol. They set out a trust (or as the late, call it a Conventional Trust) in relation to Lands, and being denied by the answer, the Complainant alleging the agreement, must, to sustain it, produce such proof as will satisfy the requirements of the Statute of Frauds. Wolf & wife vs Early, et al Mod. 356 small vs. Durig, 1 Mod Ch Dec 363.

The Bill, and all the testimony in this case (even if admissible) show only a parol agreement between the parties in relation to lands, and tend to, create a trust in relation thereto. This cannot be shown by parol evidence, because it would be contrary to the 7th section of the Statute of Frauds and Purposes, which provides that "All declarations of trust and confidence, of any lands, &c, shall be manifested and proved by some writing signed by the party who is by law enabled to declare such trust. M'Golding vs Shifley, et al 2 Mod. 37. Horsley et al vs Clarke et al. 4. 418 of 55.

In the case of Horsley et al. vs Clarke et al. the Court say, "The witness Clarke, proves that Horsley, informed him that he had bought the land to benefit Yieldhall, and if Yieldhall would pay him the purchase money, with interest, he would convey to him the Land. Taking this evidence in its utmost latitude, by considering it as proving an agreement between Yieldhall and Horsley, it could only operate to set up a trust on the foundation of a special contract between the parties, and to permit such a conventional trust to be proved by parol, would subvert the Statute of Frauds and Purposes." This case is identical in principle, and almost identical in its facts with the case now before this Court. The Court is therefore, of the opinion that the Bill ought to be dismissed. Entertaining these views, it is unnecessary to say anything upon the state of the accounts between the parties.

It is therefore, this 25th, day of February, A. D. 1876, by the Circuit Court for Frederick County, as a Court of Equity, and by the authority thereof, adjudged, ordered and decreed that, the Bill of Complaint filed in this Cause, be, and the same is hereby dismissed, and it is further ordered that the Complainant pay the Costs of this suit.

W. Veirs Poore

John A. Lynch
Judge of the Cir - Court

Joseph C Keller
vs
Philip B Kunkel

No 3753 Equity
In the Circuit Court for Frederick County in Equity

Thomas Goruck Esq.

Clerk of the Circuit Court G.